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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAMUEL FORD,

Plaintiff,

-v-

CITY OF NEW YORK et al.,

Defendants.
-----X

15 Civ. 7598 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Samuel Ford brings this action under 42 U.S.C. § 1983 alleging that the mattress he was issued while incarcerated caused him severe pain. Before the Court is the August 29, 2016 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court dismiss this action with prejudice. Dkt. 23 (“Report”). For the following reasons, the Court adopts this recommendation.

I. Background

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 2-5.

On September 25, 2015, Ford filed a Complaint. Dkt. 2. On November 4, 2015, the Court referred this case to Judge Francis for general pretrial supervision and for a report and recommendation. Dkt. 7. On April 4, 2016, defendants filed a motion to dismiss the Complaint, along with a supporting memorandum of law. Dkts. 20, 21. Ford did not respond to the motion.

On August 29, 2016, Judge Francis issued the Report, recommending that the Court dismiss the Complaint with prejudice. Objections were due by September 12, 2016. *See* Dkt. 23. To date, the Court has received no objections.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 16, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

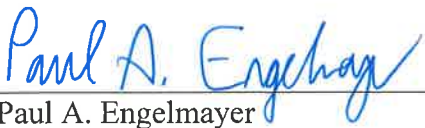
Careful review of Judge Francis’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. As Semprit has already had the opportunity to amend his Complaint, the Court agrees with Judge Francis that this dismissal shall be with prejudice.

CONCLUSION

For the foregoing reasons, the Court dismisses Ford’s Complaint with prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: September 15, 2016
New York, New York